THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.22742 OF 2006

25th November, 2006.

Between:

Canara Bank, a nationalized bank
constituted and Functioning under
the provisions of Banking companies
(Acquisition and Transfer of Undertakings)
Act V of 1970 with its Head Office at
112, Jayachanmarajendra Road,
Bangalore and branch amongst
other places situated at R.P. Road,
Secunderabad, represented by its
Senior Manager – D. Lakshmana Rao. .. Petitioner.

And

Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi,
Represented by its chairman and
Managing Director and others. .. Respondents.

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ORDER:

Canara Bank, R.P. Road, Secunderabad, is the writ petitioner. In the affidavit filed in support of the writ petition, it is stated that the 4th respondent herein having availed certain credit facilities from the petitioner-Bank committed default in discharging the same. Consequently, the petitioner-Bank filed O.A.No.404 of 2000 in the Debts Recovery Tribunal, Hyderabad, for recovery of amount due from the 4th respondent, which is pending.

During the pendency of the above proceedings, the 1st respondent-Power Grid Corporation of India Limited had invoked the bank guarantee dated 24.2.1997 furnished by the petitioner-Bank on behalf of the 4th respondent. Accordingly, the petitioner-Bank paid the entire amount covered by the bank guarantee i.e., Rs.2,44,50,362/- to

the 1st respondent-Corporation. The petitioner claims that the said amount is also due from the 4th respondent.

While so, the 4th respondent-Company became a sick unit and on a reference made to the Board for Industrial Finance and Reconstruction (BIFR), a case was registered with the BIFR vide Case No.374/2000. Pursuant thereto, by operation of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the Act"), all further proceedings in O.A.No.404 of 2000, pending on the file of the Debts Recovery Tribunal against the 4th respondent, remained suspended.

In the meanwhile, at the instance of the 4th respondent, the dispute between the 1st respondent-Corporation and the 4th respondent was referred to Arbitration in terms of Arbitration Clause in the agreement between them. After due enquiry, an award was passed in favour of the 4th respondent directing refund of Rs.2,44,50,362/- which was paid by the petitioner-Bank to the 1st respondent on invocation of the bank guarantee, and the respondents 1 to 3 agreed to release the said amount in favour of the 4th respondent.

Hence, this writ petition seeking a mandamus to respondents 1 to 3 to release the entire amount as per the arbitral award to the petitioner-Bank.

It is alleged by the petitioner that respondents 1 to 3 had colluded with the 4th respondent and agreed to release the amount in question to the 4th respondent though they were very well aware of the fact that the loan accounts of the 4th respondent with the petitioner-Bank were classified as non-performing assets.

I have heard the learned counsel for the petitioner-Bank as well as the learned counsel for the respondents and perused the material on record.

The learned counsel for the petitioner vehemently contended

that once the amounts are released by the 1st respondent-Corporation in favour of the 4th respondent, the petitioner-Bank, which is a Public Sector Undertaking and dealing with public money would be put to irreparable hardship. The learned counsel submitted that by operation of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the recovery proceedings before the Tribunal remained suspended and since the amount in question was admittedly paid by the petitioner-Bank to the 1st respondent-Corporation on invocation of the bank guarantee, it would be appropriate to direct the said amount to be released to the petitioner-Bank.

The fact that the petitioner-Bank paid the amount covered by the bank guarantee on demand by the 1st respondent-Corporation has not been disputed by the 1st respondent. It is also not in dispute that subsequently by virtue of arbitral award passed in accordance with the terms and conditions of the agreement between the 1st and 4th respondents, the 1st respondent-Corporation agreed to refund the amount covered by the bank guarantee to the 4th respondent. However, the petitioner-Bank, which is neither a party to the said agreement nor the arbitration proceedings, cannot claim any right for release of the said amount in its favour. The claim of the petitioner-Bank against the 4th respondent with regard to the recovery of the amount covered by the bank guarantee is nothing but a money claim for which the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Absolutely no case is made out by the petitioner to show that the 1st respondent failed to perform any statutory obligation or that the inaction of the 1st respondent resulted in infringement of legal right accrued to the petitioner.

Hence, the writ petition cannot be maintained and is accordingly dismissed. However, this shall not preclude the petitioner to proceed against the 4th respondent for recovery of the amount in

question by working out appropriate remedy available under law. No costs.

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(G. ROHINI, J.)

25th November, 2006.
Issue CC in two days.
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